the transportation of passengers within the state. After the rate had been tested by operating under it for two years, it was shown to yield a return only slightly, if at all, in excess of the actual out-of-pocket expense of conducting the service plus the apportioned share of fixed charges attributable to the passenger traffic. *Held*, that the statute is unconstitutional. *Norfolk & Western Ry. Co.* v. *Conley*, U. S. Sup. Ct. Off. No. 197 (March 8, 1915).

For a discussion of the principles involved in these cases see this issue of the REVIEW, p. 683.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — SIZE OF COMBINATION AS A BASIS FOR DISSOLUTION. — The United States brought a bill in equity against the Keystone Watch Case Company charging violations of the first and second sections of the Sherman Anti-Trust Act. It appeared that the defendant had acquired control of about fifty per cent of the industry and that it had since imposed restrictive agreements upon jobbers to whom the product was sold. But no inflation of prices, limitation of production, or other abuse of power was shown. *Held*, that the unfair practices be enjoined, but that the petition for dissolution be dismissed. *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502 (Dist. Ct., E. D., Pa.).

Since the decree by the federal district court in Minnesota dissolving the International Harvester Company, and pending the appeal to the United States Supreme Court, a number of opinions have been given in coördinate courts that display a sharp divergence from the construction laid upon Section 2 of the Sherman Act by that decision. In the principal case three circuit judges adopt the principles to be found in the dissent of Sanborn, J., in the Harvester case, and accept the rule that size alone does not constitute monopoly within the meaning of the Act. See *United States* v. *International Harvester Co.*, 214 Fed. 987, 1002. There must be unreasonable use of power, and actual or threatened injury to the public to warrant dissolution. See 28 HARV. L. REV. 87. In the "fighting ships" case the court dealt with a combination of steamship lines that was using certain unfair methods, but that decree also stopped short of dissolution and simply enjoined the illegal practices. *United States* v. *Hamburgh American S. S. Line*, 216 Fed. 971. In another steamship case the government established that a large consolidation had taken place, but here too the petition for dissolution was dismissed because no one could be found among shippers, competitors, or the general public who was dissatisfied with it, or who could show unreasonable injury therefrom. *United States* v. *American-Asiatic S. S. Co.*, 220 Fed. 230. In any case where the record of a combination is likewise barren of grievances on the part of the public or of individuals, to enforce its dissolution solely on account of magnitude is a step thoroughly hostile to the industrial development of the country.

SPECIFIC PERFORMANCE — PARTIAL PERFORMANCE WITH COMPENSATION — CREATION OF DOWER RIGHT IN STRANGER APART FROM SEISIN OF THE HUSBAND. — An owner of land, whose wife had a statutory interest in the property similar to dower, made a contract to convey to the plaintiff in which the wife did not join. The wife later joined with him in a conveyance to the defendant, who had notice of the plaintiff's claim. The plaintiff now brings a bill for specific performance. *Held*, that the defendant convey such interest as the plaintiff could have acquired from the vendor with suitable abatement from the purchase price, or at his own election, convey the whole. *Williams* v. *Wessels*, 145 Pac. 856 (Kan.).

A release of inchoate dower operates as an extinguishment of the wife's interest. *Witthaus* v. *Schack*, 105 N. Y. 332, 11 N. E. 649; *Chicago Dock Co.* v. *Kinzie*, 49 Ill. 289. See *Tirrel* v. *Kenney*, 137 Mass. 30, 32. Consequently it has been held hitherto that a purchaser with notice who gets a conveyance

free from dower must convey to the prior purchaser who did not secure the wife's signature, upon receiving the purchase price or such portion thereof as shall put him *in statu quo*. *Saldutti* v. *Flynn*, 72 N. J. Eq. 157, 65 Atl. 246; *Mansfield* v. *Hodgdon*, 147 Mass. 304, 17 N. E. 544. However, he has in effect purchased for value a portion of the rights in the freehold to which an instant before the conveyance the prior purchaser was not entitled in law or equity. *Mix* v. *Baldwin*, 156 Ill. 313, 40 N. E. 959; *Richmond* v. *Robinson*, 12 Mich. 193. And therefore there is reason to revive the incumbrance and give him the value of his bargain to that extent. On the other hand inchoate dower, as such, cannot be aliened. *Mason* v. *Mason*, 140 Mass. 63, 3 N. E. 19; *Witthaus* v. *Schack*, *supra*. See LAMBERT, DOWER, p. 26. But the husband is often compelled to convey his interest alone, leaving the dower in the wife. *Davis* v. *Parker*, 14 Allen (Mass.) 94. See 25 HARV. L. REV. 731. To this extent, at least, the policy against allowing the fee and the inchoate dower interest to be held by parties who are strangers to each other has never controlled. Nor does it seem too much against policy for the court in the principal case to revive this anomalous interest in the subsequent purchaser, at least in jurisdictions such as Kansas, where there have been indications of a liberal attitude toward inchoate dower. See *Munger* v. *Baldridge*, 41 Kan. 236, 21 Pac. 159. The abatement of the purchase price granted in the principal case would be refused by some courts in a suit against the husband, because of the tendency to coerce the wife. *Reisz's Appeal*, 73 Pa. 485; *Bride* v. *Reeves*, 36 App. D. C. 476. But no such difficulty arises here, and in the manner of allowing compensation the court also follows the weight of authority, computing it according to the theory of probabilities instead of giving indemnity to the purchaser by reserving until the wife's death the value of vested dower, subject to interest. *Walker* v. *Kelly*, 91 Mich. 212, 51 N. W. 934; *Davis* v. *Parker*, *supra*; *Sanborn* v. *Hookin*, 20 Minn. 178; see 25 HARV. L. REV. 731.

TRADE UNIONS — PUNISHMENT OF OUTSIDE PARTY — SUIT TO RESTRAIN LABOR UNION FROM COMPELLING MEMBERS NOT TO TAKE EMPLOYMENT BY THREATENING FINE. — The plaintiff, having entered into a contract with certain members of defendant union, which comprised practically all the musicians of Rhode Island available, refused to go on with the contract, claiming that unsatisfactory music was furnished. He then arranged with other members of defendant union to play for him, whereupon the directors of the union having heard both sides of the dispute with the first orchestra and decided that the plaintiff had wrongfully broken his contract, acted in accordance with a by-law of the union and forbade all union members to enter or continue in the employ of the plaintiff. The lower court granted a preliminary injunction restraining the defendants from interfering with the business of the plaintiff or attempting to collect any fines from its members by way of enforcing the order of the directors. *Held*, that the injunction be dissolved. *Rhodes Brothers* v. *Musicians' Protective Union Local, etc.*, 92 Atl. 641 (R. I.).

For a discussion of the use of fines and other disciplinary measures to enforce a union by-law for the punishment of an outsider, see NOTES, p. 696.

TRUSTS — CREATION AND VALIDITY — BEQUEST ON SECRET UNDERSTANDING: LIABILITY OF LEGATEE TO TRANSFER TAX. — The testator bequeathed his personalty to his brother, who had agreed to distribute it in accordance with the testator's wishes as expressed in an unattested memorandum which was not referred to in the will. The memorandum, the contents of which were not communicated to the legatee until the testator's death, directed the money to be given to certain charities. Without having made a full distribution the legatee died, and left the property to the defendant under a similar agreement to distribute in accordance with the memorandum. The state now seeks to